



## VILLAGE OF KEY BISCAINE

### Office of the Village Manager

#### *Village Council*

Robert Oldakowski, *Mayor*  
Jorge E. Mendia, *Vice Mayor*  
Martha Fdez-León Broucek  
Carol Diaz-Castro  
Mortimer Fried  
James L. Peters  
Robert L. Vernon

DT: January 30, 2004

TO: Honorable Mayor and Members of the Village Council

FR: Jacqueline R. Menendez, Village Manager

RE: Amendment 15 to Our Agreement with James A. Cummings

### RECOMMENDATION

It is recommended that the Council approve the attached Resolution which amends our Agreement with James A. Cummings, Inc. The resolution includes one (1) amendment to our Agreement which provides additional funding for the Civic Center Project.

### EXPLANATION

Amendment 15: This amendment requests an increase in funding \$286,867 for design changes and site and site infrastructure revisions for the Village Fire Rescue and Police and Administration Buildings as reflected in the following request for Change Orders; #R-110F #R-111F #R-112F #R-113F #R-114F #R-58P #R-60P #R-118P #R-119P #R-120P #R-121P #R-122P #R-123P #R-124P #R-11 #R-12I #R-13I #R-14I #R-17I. The amount requested was reviewed and previously presented to Council by the Project Construction Consultant, Skyline Management Group and is included in the over all Civic Center revised budget projection submitted to Council on October 28, 2003.

**RESOLUTION NO. 2004-**

**A CAPITAL PROJECT AUTHORIZING RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, CONCERNING THE VILLAGE OF KEY BISCAYNE CIVIC CENTER PROJECT; AUTHORIZING CONSTRUCTION EXPENSE ITEMS DESCRIBED HEREIN; AUTHORIZING AMENDMENT NO. 15 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER CONCERNING MATTERS DESCRIBED THEREIN; PROVIDING FOR EFFECTIVE DATE.**

WHEREAS, pursuant to Section 3.07(b) of the Village Charter, the Village Council desires to authorize the expenditure of Village funds for additional construction items for the Village's Civic Center Project (the "Project") as described in the Village Manager's Memorandum, marked as Exhibit "A" and attached hereto; and

WHEREAS, it is necessary to amend the Agreement between the Village and Construction Manager to implement expenditures for the work authorized herein; and

WHEREAS, the Village Council finds that it is in the best interest of the Village to proceed as indicated in this resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

**Section 2. Work Authorized, Specification Of Funds.**

A. That the construction activities for the matters described in Amendment No. 15 and in Exhibit "A", attached hereto, are each hereby approved and authorized.

B. That the fund amount and source for the work items are hereby authorized and

approved as described in Exhibit "A."

**Section 3. Amendment To Agreement Approved.** That Amendment No. 15 to the Agreement between Village and Construction Manager, in substantially the form attached hereto, is hereby approved and the Village Manager and Village Clerk are hereby authorized, in their respective capacities, to execute the Amendment to Agreement on behalf of the Village, once approved as to legal form and sufficiency by the Village Attorney.

**Section 4. Implementation.** That the Village Manager is hereby authorized to take any and all action necessary to implement the purposes of this resolution and the Amendment to Agreement.

**Section 5. Effective Date.** That this resolution shall become effective upon its adoption.  
PASSED AND ADOPTED this 10th day of February, 2004.

MAYOR ROBERT OLDAKOWSKI

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

**AMENDMENT TO AGREEMENT  
BETWEEN OWNER AND CONSTRUCTION MANAGER**

PROJECT NO.: VKB-98069000

PROJECT NAME AND LOCATION: Village Community Center (Recreation Center)  
Village Fire Station, Police Station, and  
Administrative Office of the Village of  
Key Biscayne, Florida (the "Project")

AMENDMENT NUMBER #15 (Owner Directed Design Changes at Village Fire  
Rescue, Police & Administration Buildings; and Site & Site  
Infrastructure Revisions.)

THIS AMENDMENT made this 9<sup>th</sup> Day of December in the year Two Thousand and Three

By and between the Village of Key Biscayne, Florida, a Florida municipality, (the "Owner") and

James A. Cummings, Inc.  
a Florida Corporation  
3575 Northwest 53rd Street  
Ft. Lauderdale, FL 33309  
Phone: (954) 733-4211, Fax (954) 485-9688, Federal Tax I.D. Number: 59-2098732,

(the "Construction Manager").

WHEREAS, the Owner (as a direct signatory and through its former agent, the Department of Management Services of the State of Florida (the "DMS")) has previously entered into the Agreement between the Owner and Construction Manager; and

WHEREAS, the Agreement has previously been revised by Amendment Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14;

WHEREAS, it is now necessary to revise the Agreement to: include Work Associated with Owner Directed Design Changes for the Village Fire Rescue Station and Police and Administration Buildings; and Site & Site Infrastructure Revisions.

NOW, THEREFORE, in recognition of the good and valuable consideration provided by the covenants hereof between the parties, the Owner and the Construction Manager hereby covenant and agree to amend the Agreement to include work for the Owner directed design changes for the Village Fire Rescue Station, Police and Administration Buildings; Site & Site Infrastructure Revisions and to identify its funding source; to identify the drawings, specifications and other documents upon which the GMP is based; and to otherwise revise the Agreement, as follows:

- (1) **Guaranteed Maximum Price** – the Guaranteed Maximum Price (GMP) for construction of Project VKB-98069000, Village Community Center, Village Fire Station, Village Police Station, and Administrative Office of the Village, as defined in Article 7.1 of said Agreement shall be:

\$22,464,165.59 (which includes the \$286,867.00 GMP for the Work Associated with the Owner Directed Design Changes and Site & Site Infrastructure Revisions as listed below in items 2.a through 2.s for the Village Fire Rescue and Police and Administration Buildings.)

- (2) **Drawings and Other Supporting Documents** – in addition to the drawings, specifications and other supporting documents identified in previous amendments (No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14) to the Agreement, the Guaranteed Maximum Price (GMP) for construction of the Project, is based upon the following drawings and other supporting documents:

- a. Proposal #R-110F to the Village of Key Biscayne from James A. Cummings, Inc., dated July 24, 2003, and in accordance with OBM Miami, Inc. RFI #OP0211 dated July 11, 2002, and Guerraro/Gonzalez Engineers correspondence dated March 10, 2003, which are attached hereto as Exhibit "A.1."
- b. Proposal #R-111F to the Village of Key Biscayne from James A. Cummings, Inc., dated July 23, 2003, and in accordance with OBM Miami, Inc. correspondence dated June 11, 2002, which are attached hereto as Exhibit "A.2."
- c. Proposal #R-112F to the Village of Key Biscayne from James A. Cummings, Inc., dated August 11, 2003, and in accordance with HDR/Fitzgerald Consulting Group Drawing EY102 dated July 10, 2002, which are attached hereto as Exhibit "A.3."
- d. Proposal #R-113F to the Village of Key Biscayne from James A. Cummings, Inc., dated August 22, 2003, and in accordance with OBM Miami, Inc. RFI #OP0268 dated August 13, 2002, which are attached hereto as Exhibit "A.4."
- e. Proposal #R-114F to the Village of Key Biscayne from James A. Cummings, Inc., dated August 26, 2003, and in accordance with OBM Miami, Inc. RFI #OP0242 dated September 20, 2002, which are attached hereto as Exhibit "A.5."
- f. Proposal #R-58P to the Village of Key Biscayne from James A. Cummings, Inc., dated June 7, 2003, which are attached hereto as Exhibit "A.6."
- g. Proposal #R-60P to the Village of Key Biscayne from James A. Cummings, Inc., dated August 1, 2002, which are attached hereto as Exhibit "A.7."
- h. Proposal #R-118P to the Village of Key Biscayne from James A. Cummings, Inc., dated July 16, 2003, and in accordance with Fuster Design Associates Revised

Drawings L1, L2, I1 and I2 dated May 28, 2003; and Drawing I1 dated July 16, 2003, which are attached hereto as Exhibit "A.8."

- i. Proposal #R-119P to the Village of Key Biscayne from James A. Cummings, Inc., dated July 18, 2003, and in accordance with Spillis Candela DMJM RFI #PC0207 dated July 18, 2003, which are attached hereto as Exhibit "A.9."
- j. Proposal #R-120P to the Village of Key Biscayne from James A. Cummings, Inc., dated July 20, 2003, and in accordance with ITC No. 36 dated April 10, 2003 and Spillis Candela DMJM Revised Drawings C2.1.01, C3.1.01 and C4.1.01 dated March 13, 2003; and Electrical Drawings E1.2.00 and E5.1.02 dated April 10, 2003, which are attached hereto as Exhibit "A.10."
- k. Proposal #R-121P to the Village of Key Biscayne from James A. Cummings, Inc., dated July 20, 2003, which are attached hereto as Exhibit "A.11."
- l. Proposal #R-122P to the Village of Key Biscayne from James A. Cummings, Inc., dated August 11, 2003, and in accordance with Spillis Candela DMJM ITC No. 16 (Rev. 1) dated March 28, 2002, which are attached hereto as Exhibit "A.12."
- m. Proposal #R-123P to the Village of Key Biscayne from James A. Cummings, Inc., dated August 25, 2003, and in accordance with Spillis Candela DMJM RFI #PC0160 dated August 14, 2002, which are attached hereto as Exhibit "A.13."
- n. Proposal #R-124P to the Village of Key Biscayne from James A. Cummings, Inc., dated September 3, 2003, and in accordance with Spillis Candela correspondence dated August 13, 2003 and Mechanical and Electrical sketches MSK-5, ESK-37 and ESK-38 dated August 11, 2003, which are attached hereto as Exhibit "A.14."
- o. Proposal #R-11I to the Village of Key Biscayne from James A. Cummings, Inc., dated July 24, 2003, and in accordance with WASA comments on Spillis Candela DMJM Drawings C1.1.01 & C1.1.02 dated October 22, 2002 (Rev. 3), which are attached hereto as Exhibit "A.15."
- p. Proposal #R-12I to the Village of Key Biscayne from James A. Cummings, Inc., dated July 28, 2003, and in accordance with Fuster Design Associates Drawings L1 & L2 dated April 7, 2003 and I1, I2 & I3, dated June 16, 2003, which are attached hereto as Exhibit "A.16."
- q. Proposal #R-13I to the Village of Key Biscayne from James A. Cummings, Inc., dated August 1, 2003, and in accordance with Spillis Candela DMJM Revised Civil Drawings C1.1.03, C1.1.05 through C6.1.02 and C7.1.00 through C7.1.05 dated March 27, 2003, which are attached hereto as Exhibit "A.17."
- r. Proposal #R-14I to the Village of Key Biscayne from James A. Cummings, Inc., dated August 25, 2003, and in accordance with Spillis Candela DMJM RFI's #I017

(dated 06/09/03) & I017A (dated 07/17/03), and Revised Electrical Civil Drawings EE0.1.01, EE1.1.02 & EE1.1.08 dated July 16, 2003, which are attached hereto as Exhibit "A.18."

- s. Proposal #R-17I to the Village of Key Biscayne from James A. Cummings, Inc., dated October 7, 2003, and in accordance with the request provided by the Village of Key Biscayne Public Works, which are attached hereto as Exhibit "A.19."
  - t. The revised Project Budget, which is attached hereto as Exhibit "B."
- (3) **Changes in Agreement** – various changes are required to the exhibits and articles of the Agreement to reflect the amendments described herein. It is agreed that the articles and exhibits of the Agreement shall be deemed to be amended, to provide the following:
- a. Establishment of the GMP for Work Associated with the Owner Directed Design Changes for the Fire Rescue, Police and Administration Buildings; and Site & Site Infrastructure Revisions in the amount of \$286,867.00; and establishment of the GMP for the Project of \$22,464,165.59.
- (4) **Effect On Agreement** - except as provided above, the articles and exhibits of the Agreement which are not affected by the amendments provided for herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first written above.

**JAMES A. CUMMINGS, INC.**

Attest:

By: \_\_\_\_\_  
Corporate Secretary

By: \_\_\_\_\_  
William R. Derrer, Corporate President  
James A. Cummings, Inc.

Witnessed:

By: \_\_\_\_\_  
\_\_\_\_\_  
(print name)

(Corporate Seal)

By: \_\_\_\_\_  
\_\_\_\_\_  
(print name)

**VILLAGE OF KEY BISCAYNE**

Attest:

By: \_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Village Manager

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Village Attorney



## EXHIBIT B

### OWNER'S CONSTRUCTION BUDGET

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
CONSTRUCTION MANAGER'S PRECONSTRUCTION PHASE FEE .....	\$113,190.00
SUBTOTAL OWNER'S TOTAL PRECONSTRUCTION PHASE FEE .....	\$113,190.00
<u>VILLAGE FIRE RESCUE DEPARTMENT &amp; ADMINISTRATION AND POLICE FACILITY</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE .....	\$527,392.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT .....	\$457,223.00
CONSTRUCTION BUDGET BALANCE .....	\$9,878,355.00
AMENDMENT NO. 09 – OWNER REQUESTED CHANGES .....	\$232,893.00
AMENDMENT NO. 15 – OWNER DESIGN CHANGES .....	\$182,318.00
SUBTOTAL CONSTRUCTION COSTS .....	\$11,278,181.00
ANTICIPATED OWNER SALES TAX SAVINGS .....	(\$159,266.00)
SUBTOTAL .....	\$11,118,915.00
OWNER'S CONTINGENCY .....	\$256,924.00
OWNER'S GMP BUDGET - FIRE RESCUE & ADMINISTRATION/POLICE .....	\$11,375,839.00
OWNER'S CONSTRUCTION BUDGET - FIRE RESCUE & ADMINISTRATION/POLICE WITH PRECONSTRUCTION FEE .....	<u>\$11,489,029.00</u>
<u>VILLAGE CIVIC CENTER SITE &amp; SITE INFRASTRUCTURE WORK ELECTRICAL DUCT BANK AND WATER MAIN</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE .....	\$119,226.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT .....	\$34,521.00
CONSTRUCTION BUDGET BALANCE .....	\$647,913.00
OWNER'S CONSTRUCTION BUDGET - VILLAGE CIVIC CENTER SITE & SITE INFRASTRUCTURE WORK ELECTRICAL DUCT BANK AND WATER MAIN .....	<u>\$801,660.00</u>
<u>VILLAGE CIVIC CENTER SITE &amp; SITE INFRASTRUCTURE WORK PHASES 1, 2, 3, 4, 5 &amp; 6 (INCLUDING STATE SCHOOL "FF" SANITARY SEWER FORCE MAIN)</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE .....	\$62,630.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT .....	\$84,541.00
AMENDMENT NO. 15 – OWNER DESIGN CHANGES .....	\$104,549.00
CONSTRUCTION BUDGET BALANCE .....	\$1,842,045.00
OWNER'S CONSTRUCTION BUDGET - VILLAGE CIVIC CENTER SITE & SITE INFRASTRUCTURE WORK .....	<u>\$2,093,765.00</u>
<u>VILLAGE COMMUNITY CENTER (RECREATION CENTER)</u>	
CONSTRUCTION MANAGER'S CONSTRUCTION PHASE FEE .....	\$771,920.00
CONSTRUCTION MANAGER'S OVERHEAD & PROFIT .....	\$425,691.00
CONSTRUCTION BUDGET BALANCE .....	\$9,141,302.00

**EXHIBIT B (cont'd.)**

**OWNER'S CONSTRUCTION BUDGET**

<u>ITEM DESCRIPTION</u>	<u>CONSTRUCTION BUDGET</u>
OWNER'S CONSTRUCTION BUDGET - VILLAGE COMMUNITY CENTER (RECREATION CENTER) .....	<u>\$10,338,913.00</u>
<u>OWNER CHANGE ORDERS</u>	
OWNER CHANGE ORDER NO. 1.....	(\$1,140,899.62)
OWNER CHANGE ORDER NO. 2.....	(\$1,118,301.79)
SUBTOTAL OWNER'S CHANGE ORDERS.....	<u>(\$2,259,201.41)</u>
OWNER'S TOTAL CONSTRUCTION BUDGET (ALL PHASES)	\$22,464,165.59